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Attorney for Defendant  
LUKE BRUGNARA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

LUKE BRUGNARA,

Defendant. / \_

No. CR 08-0222 WHA  
No. CR 14-0306 WHA

**DEFENDANT'S MOTION FOR  
EVIDENTIARY HEARING TO  
REFUTE ECONOMIC DANGER**

INTRODUCTION

\_\_\_\_ Defendant, Luke Brugnara, by and through his counsel,  
Erik Babcock, hereby moves this Court to declare that Luke Brugnara  
is not an economic danger and the Court should modify his bail  
conditions forthwith to reflect this conclusion.

Luke Brugnara is a well-respected commercial real estate  
investor and developer on the West Coast of the United States.  
Luke has completed, without partners, over \$2 billion of commercial  
real estate transactions since 1992, including commercial real  
estate purchases, sales and leases. Luke has borrowed over \$1  
billion of commercial real estate loans since 1992 and has paid  
back all of his lenders in full over the past 22 years as President  
and CEO of Brugnara Properties.

1           No one, other than Rose Long, has ever accused Luke of  
2 any criminal misconduct in his prolific quantity of commercial real  
3 estate transactions totaling over \$2 billion. This fact alone  
4 proves Luke is not an economic danger.

5           The witnesses in this motion detailed below, will further  
6 affirm Luke's success, acumen and ethical standard in his business  
7 dealings. All of these esteemed witnesses, the top professionals  
8 in their area of expertise and finance, will affirm Luke's  
9 reputation and the respect her commands as a man who honors his  
10 word and commitment:

11           1. Tony Crossley, VP Colliers International. Mr.  
12 Crossley is the top producing commercial real estate broker in San  
13 Francisco for over 20 years and the top producer at Colliers  
14 International worldwide, the largest commercial real estate company  
15 in the world. Tony Crossley has brokered all of Luke's leases,  
16 purchases and sales since 1993, totaling over \$2 billion, and has  
17 experienced no incidents of any criminal or ethical conduct from  
18 Luke. Luke is one of Collier International's top respected  
19 clients.

20           2. Nick Barbato, VP Cooper Horowitz. Cooper Horowitz is  
21 the largest commercial real estate investment banker in New York  
22 City placing over \$20 billion of loans annually. Mr. Barbato has  
23 placed \$500 million of loans for Luke over the past 20 years  
24 without any issues or incidents of any criminal or ethical conduct.  
25 Cooper Horowitz considers Luke a valued client and top commercial  
26 real estate investor and developer on the West Coast.

27           3. Mike Shustek, CEO. Destin is a NASDAQ traded public  
28 mortgage REIT. Destin has lent Luke \$200 million over the past 15

1 years without any problems or issues and no claims of commercial or  
2 unethical conduct. Shustek considers Luke a valued client and its  
3 largest borrower and the top commercial real estate investor and  
4 developer on the West Coast.

5 4. Frank Sanders, StoneTree Financial. Mr. Sanders has  
6 placed over \$200 million of commercial real estate loans since 1993  
7 for Luke. There have been no incidents of unethical or criminal  
8 misconduct and Luke is considered a valued, well-respected client  
9 who is the top commercial real estate investor and developer on the  
10 West coast over the past 20 years.

11 5. Jennifer Senhaji, Old Republic Title Company. Ms.  
12 Senhaji has insured over \$1 billion of commercial real estate  
13 transactions for Brugnara over 15 years and has had no insurance  
14 claims on title or any issues of inaccurate information, fraud or  
15 unethical or criminal conduct whatsoever. Luke has a flawless  
16 record as a client of Old Republic Title Company and is esteemed  
17 and respected for his acumen and success.

18 6. Dr. Cathy Barrett, psychiatrist. Ms. Barrett will  
19 affirm that Luke is not an economic danger and has no  
20 predisposition or desires to defraud or commit acts that are  
21 unacceptable in business. Dr. Barrett will affirm Luke is very  
22 proud of his business record that is flawless as a borrower and  
23 investor.

24 ARGUMENT

25 This Court, for over six years, has determined that Luke  
26 Brugnara is NOT an economic danger. The Bureau of Prisons, by  
27 allowing Luke to work at home confinement and the halfway home for  
28 Brugnara Properties during his sentence, determined Luke not to be

1 an economic danger. United States Probation during Luke's two  
2 years of supervised release, including a Form 12 issue on October,  
3 2013, determined that Luke is NOT an economic danger. The United  
4 States Attorney never disclosed that Luke was an economic danger  
5 during the 2008-2010 tax case where he was on "OR" release, or  
6 after release from prison from 2012-2014 when he was on supervised  
7 release, until Rose Long made these claims against Luke. Rose Long  
8 claims DO NOT usurp 22 years of excellence in business and  
9 performance as an ethical and trusted businessman at the top of his  
10 profession.

11 Luke should be allowed to close his current transaction  
12 in Las Vegas to support his family and pay the \$1.9 million  
13 restitution. It is illogical to deny him the right to work to  
14 support his family and pay his obligation based upon one person's  
15 claims, a person who impeached herself 17 times as detailed herein,  
16 during her testimony.

17 This Court is not a forum for personal vindictiveness or  
18 retribution; nor a venue for prosecutorial misconduct to enforce  
19 personal agendas. Neither the government, nor the public, nor Luke  
20 benefits from restricting his right to work as he is presumed  
21 innocent.

22 MR. BRUGNARA DOES NOT POSE AN ECONOMIC DANGER TO THE COMMUNITY

23 Mr. Brugnara does not pose any economic danger to the  
24 community. See *United States v. Reynolds*, 956 F.2d 192-93 (9<sup>th</sup> Cir.  
25 1992) (danger to the community under section 3143 "may, at least in  
26 some cases, encompass pecuniary or economic harm"). The primary  
27 evidence proffered by the government that Mr. Brugnara poses an  
28 economic danger to the community relates to the unproven

1 allegations underlying the new mail fraud charge. But because Mr.  
2 Brugnara is presumed innocent of the charge against him, this Court  
3 should afford less weight to those allegations in determining  
4 whether Mr. Brugnara poses an economic danger to the community.  
5 See *United States v. Madoff*, 586 F. Supp. 2d 240, 252-53 (S.D.N.Y.  
6 2009) ("[A] presumption of innocence may be a factor in determining  
7 the weight of an alleged economic harm and whether it would rise to  
8 the level of danger to the community."). And, as noted above, the  
9 weight of the evidence against Mr. Brugnara is the least important  
10 factor to consider. See *Motamedi*, 767 F.2d at 1408.

11           Moreover, even if this Court considers the underlying  
12 allegations, the scope of the alleged fraudulent conduct is quite  
13 limited, involving only a single art dealer; all but one of the  
14 pieces of art at issue have been returned; and the location and  
15 provenance of the remaining piece is still a matter of dispute.  
16 See Exhibit F: *Articles*. Thus the scope of the alleged economic  
17 danger based on the charged conduct is not vast, has already been  
18 abated and was not faced by the community at large. Further, the  
19 alleged economic danger posed by Mr. Brugnara pales in comparison  
20 to numerous white-collar defendants who have faced much more  
21 serious fraud charges, and who have been released on appropriate  
22 conditions pending trial. See, e.g. *Madoff*, 586 F.Supp.2d at 255  
23 (denying government's motion to detain Bernard Madoff based on  
24 economic danger her posed to the community); see also *United States*  
25 *v. Madoff*, 826 F.Supp.2d 699, 700 (S.D.N.Y. 2011) (noting that  
26 Madoff's fraud scheme cost his clients billions of dollars); *United*  
27 *States v. Giordano*, 370 F.Supp. 2d 1256, 1264 (S.D. Fla.  
28 2005) (denying government's detention motion even when defendant was

1 charged with 35 counts of various fraud offenses and explaining  
2 that "In economic fraud cases, it is particularly important that  
3 the government proffer more than the fact of a serious economic  
4 crime that general great sums of ill-gotten gains ... evidence of  
5 strong foreign family or business ties is necessary to detain a  
6 defendant even in the face of a high monetary bond").

7       **A. Mr. Brugnara Does Not Have a Propensity to Commit Fraud**

8               While this Court may validly consider Mr. Brugnara's  
9 propensity to commit crime generally in determining whether he  
10 poses an economic danger, Mr. Brugnara has not shown any such  
11 propensity. See *United States v. Provenzano*, 605 F.2d 85, 95 (3d  
12 Cir. 1979) ("[A] defendant's propensity to commit crime generally,  
13 even if the resulting harm would be not solely physical, may  
14 constitute a sufficient risk of danger to come within the  
15 contemplation of the [Bail Reform] Act."). Mr. Brugnara's criminal  
16 history is limited and does not include any prior fraud  
17 convictions. Nor has ever previously been criminally charged with  
18 fraud. Obviously, his prior tax convictions before this Court, as  
19 with the instant offense, involve elements of dishonesty or  
20 misrepresentation; but this does not demonstrate that he is prone  
21 to committing fraud; particularly in that all of the prior  
22 allegations of fraudulent conduct and/or filing false tax returns  
23 are distinct in kind.

24               Under the government's reasoning, however, virtually all  
25 white-collar defendants with no history of assertive violence would  
26 be subject to detention on the ground that they posed an economic  
27 danger, simply because their alleged fraudulent conduct involved  
28 large sums of money. But such reasoning runs contrary to the Bail

1 Reform Act, which demands that "[o]nly in rare circumstances should  
2 release be denied, and doubts regarding the propriety of release  
3 should be resolved in the defendant's favor[,] " see *Gebro*, 948 F.2d  
4 at 1121, and further "mandates [the] release of a person facing  
5 trial under the least restrictive condition or combination of  
6 conditions that will reasonably assure the appearance of the person  
7 as required." See *Motamedi*, 767 F.2d at 1405 ("The Fifth and  
8 Eighth Amendments' prohibitions of liberty without due process and  
9 of excessive bail require careful review of pretrial detention  
10 orders to ensure that the statutory mandate has been respected.").

11       B.     **Rose Long's Testimony At the Form 12 Hearing Was Not  
12             Credible**

13             Rose Long lied numerous times during her Form 12  
14 testimony and impeached herself at least 17 times. She is simply  
15 not credible. Her testimony cannot trump and supercede 22 years of  
16 flawless business performance by Luke Brugnara on over \$2 billion  
17 of commercial real estate without any issues of claims of criminal  
18 misconduct.

19             The specific lies and impeachments revealed during Rose  
20 Long's Form 12 testimony include:

21             1. She lied that she gave invoices to Luke when none  
22 were given; more incredulous is that she testified that the invoice  
23 she forwarded to her attorney Harvey Schoslett at DWT was not an  
24 accurate invoice, yet Schoslett advanced that invoice to attorney  
25 Bob Kane by e-mail as an accurate invoice, yet she testified it was  
26 not accurate or valid.  
27  
28

1           2. She testified to five different versions of the  
2 "deal"/"contract" with Luke to buy the art; each version is  
3 dramatically different.

4           1. 50 percent in 5 days, 50 percent in 365 days

5           2. 100 percent in 365 days

6           3. 100 percent in 5 days

7           4. \$6.1 million for the DeKoonings

8           5. \$7.5 million for the DeKoonings

9           3. She claimed in numerous e-mails that she had a  
10 partner when she had no partner.

11           4. She claimed that Sotheby's and Christie's had not  
12 seen the artwork in her e-mails, yet Maibaum the FBI statement  
13 refutes that claim and states the auction houses don't accept these  
14 works as authentic.

15           5. She testified twice that the Sea Cliff garage was  
16 empty, when it is loaded to the hilt with garbage for 10 years.

17           6. She lied that the shipment was insured when it was  
18 not insured.

19           7. She lied that she was sending an original Degas that  
20 she owned for years worth over \$20 million when she did not own it,  
21 nor was it an original Degas, as it is a copy, stamped  
22 "reproduction."

23           8. She testified she counted and inspected the crates,  
24 yet her texts and affidavits to FBI state she did not.

25           9. She testified she owned a SECOND Little Dancer Degas  
26 when she does not own a second Little Dancer Degas.

27           10. She lied in numerous e-mails to me and her attorney  
28 that she owned the art when she never owned the art.



11. She lied about not knowing about her ALIAS website when she ordered it to be posted.

12. She lied about her education and degree.

13. She lied about selling Luke a Picasso in 2004.

14. She lied that she didn't know my museum was going to be in Las Vegas yet her FBI report affirms she knew this fact.

15. She lied that she brought a bag of tools.

16. She lied that a crew delivered the crates, yet only one tiny (5'5") Hispanic man unloaded the crates.

17. She lied that I didn't return her calls when I returned all of her calls.

## CONCLUSION

A man who has completed a mind-numbing \$2,000,000,000 of commercial real estate transactions over 22 years, without any prior claims of criminal misconduct (save for Rose Long's claims) cannot be considered an "economic threat." A man or woman is judged by his/her body of work, not an unadjudicated isolated claim inconsistent with the volume of work and success an ethical excellence as affirmed by the evidence and testimony from credible esteemed professionals affirming this fact. For the overwhelming evidence presented herein and testimony this Court should declare Luke Brugnara not dangerous and an economic benefactor to the

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1 capitalist democracy that we embrace, and immediately release  
2 Brugnara from the halfway house to home confinement at 224 Sea  
3 Cliff Avenue, San Francisco.

4 DATED: September 10, 2014

5 Respectfully submitted,

6  
7 By                     /s/                      
8                      ERIK G. BABCOCK  
9 Attorney for defendant  
LUKE BRUGNARA  
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